REMARKS

Reconsideration of the rejection of the claims in this application is respectfully requested. By this amendment, claims 1, 4-7, 10, and 13-16 have been amended. Currently, claims 1, 4-10, and 13-18 are pending in this application.

Rejection under 35 USC 112, second paragraph

Examiner Duong is thanked for the courtesies extended during the telephone conference on September 22, 2008. During the telephone conference the rejection of claim 10 under 35 USC 112, second paragraph was discussed. During the telephone conference the Examiner requested applicant to prepare a draft proposed claim amendment to address a perceived problem under 35 USC 112 with claim 10. Applicants faxed the draft proposed claim amendment to the Examiner on September 22, but it appears that the proposed claim amendment did not reach the Examiner. Applicants apologize for any inconvenience. The proposed amendment has been set forth above so that it may be formally entered in this application. This amendment is believed to overcome the rejection set forth by the Examiner in the current office action. Accordingly, in view of this amendment, the Examiner is respectfully requested to withdraw the rejection of claim 10 under 35 USC 112, second paragraph.

Rejection of claims under 35 USC 103 over Ma in view of Staples

Claims 1, 3-10, and 12-18 were rejected under USC 103 over Ma (U.S. Patent No. 5,953,338) in view of Staples et al (U.S. Patent Application Publication No. 2002/0118671). This rejection is respectfully traversed in view of the amendments to the claims and the following arguments.

Staples teaches a way to enable people to use their VPN connection to also access network telephony services. (See e.g. Staples at Paragraph 42). The Examiner has cited Staples primarily as showing a VPN server (see Office Action at page 3, lines 11-14). Applicants are prepared to admit that VPN servers were known at the time of this invention. For example, applicants state at page 3, lines 25-26, that the VPN servers may be implemented using Contivity Extranet Switch (CES) servers manufactured by Nortel Networks. Thus, Staples will not be

addressed in greater detail since it will be assumed, for purposes of this paper, that VPN servers were known.

Ma teaches a call admission control system for an ATM network. An ATM network operates at the physical layer of the OSI network model. Looking at Fig. 1 of the instant application, the ATM network discussed in Ma may be used to implement the network 18 interconnecting the corporate offices. For example, at Col. 4, lines 17-22, Ma states that preferred embodiments of his ATM network enable telecommunication companies (such as ISPs 125, 127 shown in Fig. 1 of the present application) to lease unspecified capacity on virtual paths through the ATM network. Accordingly, Ma shows a particular way to implement an ATM network, which may be used to implement network 18 of Fig. 1 of the instant application.

The Examiner has focused on the fact that Ma teaches that the ATM network may be managed to restrict the flow of data on the network. This type of metering would change the bandwidth, for example, of link 121 of Fig. 1.

Applicants acknowledge in the background of this application that the bandwidth provided by an ISP may be relatively low (see Specification at page 3, lines 19-24). Ma provides a way for the person managing the network 18 to adjust how much bandwidth is provided to each corporate office on an access link such as access link 121 or access link 123.

As has been repeatedly emphasized, applicants are focused on a different area. Specifically, applicants assume that there will be a restricted amount of bandwidth on the access link and don't particularly care how the underlying network 18 is implemented. The focus, rather, is how can multiple users of the corporate network share the limited amount of bandwidth that is available on the access link. (See specification at page 4, lines 3-8). Applicants proposed to enable the VPN server to meter packets which will then flow over the ATM links provided by Ma.

The Examiner has contended that Ma discloses a system for managing bandwidth of a remote link. Applicants have repeatedly traversed this contention by making various arguments and amending the claims, etc. However, the fundamental difference between what applicants have claimed and what is shown in Ma, is that Ma changes the bandwidth of the link whereas the claim changes how the available bandwidth is used. Since Ma is operating at the physical layer, when the ATM switches adjust how much bandwidth should be provided to particular network customers, they are changing the actual bandwidth available to those customers. It is up to the

customers, then, to decide how to use the bandwidth. We are focused on this later step – how can the customers adjust how they use the available bandwidth provided by the ATM network.

In the rejection, the Examiner's stated "Regarding to claims 1 and 10, Ma discloses a system for managing bandwidth of a remote link 142A-F (corresponding to links 310-316 of fig. 3) in a virtual private network VPN 170 (fig. 1A)". (OA at page 2, paragraph 4, lines 4-7). To address this point, applicants have amended claim 1 to recite that the method is focused on managing the use of bandwidth of the remote link, rather than managing the bandwidth of the remote link. Ma may control the underlying bandwidth, but is not related to managing how the bandwidth is used. Staples likewise does not control how the bandwidth is used. Accordingly, this amendment distinguishes the combination of Ma and Staples.

The Examiner further stated that Ma teaches a meter associated with the server that "will meters the packets flow over the remote link". Applicants respectfully traverse this point. Ma teaches metering ATM cells, not IP packets. Applicants have amended claim 1 to recite that the VPN server is metering "Internet Protocol (IP) packets". Thus, this amendment further distinguishes the claims from the combination of Ma and Staples.

In view of these claim amendments, applicants respectfully submit that the claims are patentable over the combination of Ma and Staples. Accordingly, applicants request the Examiner to withdraw the rejection and allow the claims to issue.

Conclusion

Applicants cordially invite the Examiner to call the applicants to discuss this case if the Examiner feels that discussing the case may be helpful in any way, or if it appears to the Examiner that the amended claims still fail to overcome the art of record. Likewise, if the Examiner has any questions regarding the amendments or these remarks, the Examiner is requested to telephone the undersigned at the telephone number listed below.

If any fees are due in connection with this filing, the Commissioner is hereby authorized to charge payment of the fees associated with this communication or credit any overpayment to Deposit Account No. 502246 (Ref: NN-13361).

Respectfully Submitted

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